

**CITY OF LINCOLN, NEBRASKA  
COMMISSION ON HUMAN RIGHTS  
MINUTES**

June 27, 2013  
**CITY COUNCIL CHAMBERS**  
**555 S. 10<sup>TH</sup> STREET**

The June 27, 2013, meeting of the Commission on Human Rights was called to order at 4:00 p.m. by Gene Crump, Chair.

**ROLL CALL:**

The roll call was called and documented as follows:

**MEMBERS PRESENT:**

Commissioners: Gene Crump (Chair), Liz King, Mary Reece, Sue Oldfield, Hazell Rodriguez (Vice Chair), Bennie Shobe, and Micheal Thompson. Quorum was present.

**MEMBERS ABSENT:**

Takako Olson.

**STAFF PRESENT:**

Angela Lemke, Margie Nichols, Loren Roberts, Peg Dillon, and City Attorney Jocelyn Golden.

**APPROVAL OF MAY 30, 2013 MINUTES:**

A motion was made by Rodriguez and seconded by Thompson to approve the minutes of the previous meeting.

Hearing no discussion, Crump asked for the roll call. Voting "aye" was: Oldfield, Reece, Rodriguez, Shobe, and Thompson. Abstaining was King and Crump. Motion carried.

**APPROVAL OF JUNE 27, 2013, AGENDA:**

A motion was made by King and seconded by Reece to approve the June 27, 2013 meeting agenda. Crump asked for the roll call. Voting "aye" was: Crump, King, Oldfield, Reece, Rodriguez, Shobe, and Thompson. Motion carried.

**CASE DISPOSITIONS:**

**LCHR #12-1115-055-E-R**

A motion was made by Oldfield and seconded by Thompson to recommend a finding of **No Reasonable Cause**.

Rodriguez asked about the dispute with a worker's compensation claim and if the physician was paid for by the employer or was it an independent physician. Nichols replied that it was a specialist that the Complainant was referred to by the second doctor of the respondent.

Rodriguez stated she was somewhat familiar with the procedure for workers' compensation cases and that most of the reviews are done by the employer's physician. Nichols replied that the Complainant also went to a doctor he chose. The Respondent said that the Complainant was also told to bring a doctor's note into the office during the first meeting with the Respondent but the Complainant did not. Nichols replied that the Complainant acknowledges that he knew there was a second meeting but stated he didn't know he was to bring a doctor's note.

King asked for confirmation about the Complainant's knowledge of what steps he was supposed to take. King asked about the gap in time between the Complainant's original injury and the filing of the claim. Nichols replied that was accurate, and noted that the denial of the worker's compensation claim was being handled by an attorney.

Hearing no further discussion, Crump asked for the roll call. Voting "aye" was: Crump, King, Shobe, Thompson, Oldfield, Reece, and Rodriguez. Motion for a finding of **No Reasonable Cause** carried.

#### **LCHR #12-1217-063-E-R**

A motion was made by Crump and seconded by Shobe to recommend a finding of **No Reasonable Cause**.

King commented about the example case, Burlington v. Ellerth, and stated that the employer is responsible for the acts of its supervisors. King said that the supervisors threatening the Complainant's job might fall under the guidelines of physically threatening or sexual harassment and humiliation of the Complainant.

King wondered why the supervisor wasn't fired when he showed up at work during his 5 day suspension. King commented that this action by the company did not represent the company acting responsibly about the acts of their supervisor. Lemke stated that this was a difficult case since the relationship between the Complainant and the supervisor was consensual. Lemke commented that it concerned her that the supervisor was allowed into the building during his suspension; however, she added that Human Resources was not immediately aware that he was allowed into the building during his suspension, but the Operations Manager was aware. Further discussion ensued about the consensual relationship and the employer's liability. Lemke said that the company took prompt action once notified of the harassment, but the question remains whether the action taken corrected the issue. Lemke adds that the behavior of other employees was a part of the retaliation allegations, but it was not clear if this was caused by the supervisor's behavior or not.

Rodriguez asked if the lunch was for Christmas and if the supervisor did bring his child. Lemke said yes it was for Christmas, he did bring his child and a witness said he was allowed to use a 'gator' for a ride throughout the plant.

Shobe asked about the issue of preferential treatment and was concerned that there was differential treatment as a result of the relationship between the supervisor and the Complainant. Lemke replied that yes there was preferential treatment by this supervisor. Shobe asked about where the company's responsibility falls in knowing about the situation. Lemke replied that the law says that if the company knew or should have known. Lemke added that the evidence is clear that the company was aware that he was in a relationship with another subordinate. This employee was not the Complainant, and he had a child with this employee. Lemke said that the new Human Resources manager made a decision after receiving a complaint, to move the employee that was in a relationship with her supervisor, so that she would report to someone else. However, Lemke added that the company being aware of one relationship doesn't necessarily mean they would know about the issues involving the Complainant.

Rodriguez asked about the corrective measures taken by the Respondent. Rodriguez questioned why the Complainant wasn't moved to another location in the plant when she requested it. Lemke stated that the decision fell upon the Temporary agency not the Respondent in this case. The temporary agency said that it does not honor requests from employees to move them to certain lines because they cannot override the assignments made by the employer.

King asked if the other supervisor was aware of the issues that were going on between the Complainant and her supervisor at the company. Lemke stated that yes, he was aware of the situation. Lemke added that the alleged harasser was not at work on the day that the Complainant was placed on the line to work. Lemke said that there was no evidence that he was aware of issues on that particular day between the employee and the Complainant. Thompson asked if the company had policies about a supervisor having a relationship with a subordinate. Lemke said no policy existed. Lemke said that the supervisor telling the Complainant that she could lose her job if anyone knew about their relationship was more a result of the supervisor wanting to keep the relationship quiet from another employee, not a result of company policy.

Hearing no further discussion, Crump asked for the roll call. Voting "aye" was: Crump, Shobe, Thompson, Oldfield, and Rodriguez. Voting 'no' were King and Reece. Motion for a finding of **No Reasonable Cause** carried.

**LCHR #12-1218-064-E**

A motion was made by Rodriguez and seconded by Thompson to recommend a finding of **No Reasonable Cause**.

Oldfield excused herself due to a conflict of interest and left the Chambers.

Rodriguez commented that the Complainant failed to understand how his personality and his comments were inappropriate and crossed boundaries. She asked if the Respondent counseled him about this. Nichols replied yes, they talked to him several times, but it appeared that was the nature of his personality. Rodriguez stated that she could find nothing in the case that would connect this to discrimination due to race.

Hearing no further discussion, Oldfield was called back to Chambers. Crump asked for the roll call. Voting "aye" was: Crump, King, Shobe, Thompson, Reece, and Rodriguez. Abstaining was Oldfield. Motion for a finding of **No Reasonable Cause** carried.

**LCHR #12-1221-065-E-R**

A motion was made by Oldfield and seconded by Shobe to recommend a finding of **No Reasonable Cause**.

Rodriguez expressed her concern about the Complainant being terminated for leaving the company and the reason she left the company was because she felt harassed. Lemke replied that she would have liked for the Complainant to have stayed longer and pursue other options to solve the problem. Lemke said she thought the Respondent's response was reasonable since they had a responsibility to place reliable employees and the Complainant did have attendance concerns. She added that the Respondent had promised to reassign the Complainant but she was not reassigned to a different company.

The Commissioners discussed that the absences should have been considered legitimate due to the issues the Complainant was experiencing at the company. A discussion took place related to other options rather than termination of the assignment and what was reasonable in this situation. Thompson asked why the Complainant was not assigned to work at another place. Lemke replied that the Respondent could find no other assembly line jobs for her. Lemke replied that the Complainant said she could only lift up to 50 lbs and some of the placements required the ability to lift over 50 lbs. The Complainant was disqualified from a job with an alternate company due to reliability issues from a previous assignment.

Lemke also found two available driving jobs listed but the Complainant's reliability issues allegedly came into question again. Rodriguez asked if the Complainant remained eligible for placement. Lemke said she is listed as inactive and could be considered for further placement by contacting the Respondent. Crump asked if people are normally placed on the inactive list, and Lemke explained that after 30 days of no contact, then an employee is placed on an inactive list. However, Lemke stated that the Complainant was placed on the inactive list prior to the 30 days. Crump questioned the Respondent's actions in not trying to place the Complainant into another position at a different company. Commissioners discussed the validity of harassment and retaliation issues on sexual harassment and retaliation. Lemke replied that retaliation was the biggest issue in this case.

Hearing no further discussion, Crump asked for the roll call. Voting “no” was: Crump, King, Shobe, Thompson, Oldfield, Reece, and Rodriguez. Motion for a finding of **No Reasonable Cause** on both causes failed.

A motion was made by Shobe and seconded by King to recommend a finding of **No Reasonable Cause** on the first allegation of unlawful sexual harassment.

Hearing no discussion, Crump asked for the roll call. Voting “aye” was: Crump, King, Shobe, Thompson, Oldfield, Reece, and Rodriguez. Motion for a finding of **No Reasonable Cause** carried.

A motion was made by Shobe and seconded by King to recommend a finding of **Reasonable Cause** on the second allegation of retaliation.

Hearing no discussion, Crump asked for the roll call. Voting “aye” was: Crump, King, Shobe, Thompson, Oldfield, Reece, and Rodriguez. Motion for a finding of **Reasonable Cause** carried.

#### **LCHR #12-1227-066-E-R**

A motion was made by Oldfield and seconded by Thompson to recommend a finding of **No Reasonable Cause**.

King asked if anyone at the company had talked to the Complainant about her communication skills. Lemke said that a meeting took place where hours were discussed and Lemke said she believes that they were afraid to discuss her communication skills with her at this meeting. Rodriguez commented that it appeared the Complainant was just an angry person regardless of her race. When asked, Lemke commented that the Complainant did not seem angry to her. Lemke said that she felt this company was very diverse and that other African-American females were not denied hours.

Hearing no further discussion, Crump asked for the roll call. Voting “aye” was: Crump, Thompson, Oldfield, Reece, and Rodriguez. Voting ‘no’ was King and Shobe. Motion for a finding of **No Reasonable Cause** carried.

#### **LCHR #13-0408-008-E-R**

A motion was made by Reece and seconded by Shobe to recommend a finding of **No Reasonable Cause**.

King asked if there were any other options for the Complainant other than working at night. Lemke said there were no day shifts open. Lemke said that the Complainant was offended by the Respondent’s comment that the Complainant had missed more work in six months than she had in eight years of employment. Lemke said that this comment is what led to the Complainant’s behavior on her last day at the Company and ultimately to the filing of this case.

Hearing no further discussion, Crump asked for the roll call. Voting "aye" was: Crump, King, Shobe, Thompson, Oldfield, Reece, and Rodriguez. Motion for a finding of **No Reasonable Cause** carried.

**LCHR #13-0528-002-H**

A motion was made by Crump and seconded by Oldfield to recommend a finding of **No Reasonable Cause**.

Shobe asked for clarification of the facts from Lemke. Lemke replied that she believed that the Complainant was harassing the landlord and the Complainant was evicted for failing to pay rent.

Hearing no further discussion, Crump asked for the roll call. Voting "aye" was: Crump, King, Shobe, Thompson, Oldfield, Reece, and Rodriguez. Motion for a finding of **No Reasonable Cause** carried.

**ADMINISTRATIVE CLOSURES:**

**LCHR #12-1105-054-E**

A motion was made by Oldfield and seconded by Thompson to accept the administrative closure for Withdrawal with Settlement. Hearing no discussion, Crump asked for the roll call. Voting "aye" was: Crump, King, Oldfield, Reece, Rodriguez, Shobe and Thompson. Motion carried.

**OLD BUSINESS:**

Crump expressed his appreciation to Rodriguez for filling in while he was gone from the last meeting and also thanked her in advance for filling in as chair at the August meeting that he will not be able to attend.

**NEW BUSINESS:**

Roberts thanked the Commissioners for their attendance at the Juneteenth celebration, and added that it was a fun and successful community event. Commissioners expressed the success of the Juneteenth celebration and are looking forward to attending next year.

Roberts handed out brochures for the Community Conversations to be presented by the Community Health Endowment of Lincoln, and asked that they attend as many of them as possible. Roberts commented that the Commissioners have a responsibility to support the community and does appreciate all they do to accomplish that.

**Next Meeting:**

The next meeting will be Thursday, July 25, 2013, at 4:00 p.m. in the City Council Chambers at the County City Building at 555 S. 10<sup>th</sup> Street.

The meeting was adjourned at 4:53 p.m.